



INTERIOR BOARD OF INDIAN APPEALS

Stuart Hutt and Audrey Pentz v. Portland Area Director, Bureau of Indian Affairs

31 IBIA 273 (11/25/1997)

Judicial review of these cases:

Oral ruling for government, *Miller v. Bureau of Indian Affairs*, Case No. C98-330Z
(W.D. Wash. Mar. 24, 1999)

Related Board cases:

23 IBIA 114

28 IBIA 72

Reconsideration denied, 34 IBIA 16

31 IBIA 7

31 IBIA 276

31 IBIA 279

31 IBIA 282

31 IBIA 285

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31 IBIA 295

31 IBIA 296

34 IBIA 79



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

STUART HUTT,	:	Order Dismissing Appeals
Appellant	:	
	:	
AUDREY PENTZ,	:	
Appellant	:	
	:	
v.	:	Docket Nos. IBIA 96-69-A
	:	IBIA 96-70-A
	:	
PORTLAND AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 25, 1997

Appellants Stuart Hutt (Docket No. IBIA 96-69-A) and Audrey Pentz (Docket No. IBIA 96-70-A) seek review of separate decisions issued by the Portland Area Director, Bureau of Indian Affairs (Area Director; BIA), on April 12, 1996. The Area Director's decisions cancelled Appellants' residential/recreational leases along Pull and Be Damned Road on the Swinomish Indian Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses these appeals.

On June 19, 1995, the Board issued a decision in Gossett v. Portland Area Director, 28 IBIA 72. The Board there affirmed rental rate adjustments issued by the Area Director for six residential/recreational leases along Pull and Be Damned Road. Present Appellants were among the appellants in Gossett. ^{1/} As to both Appellants, the Board upheld the adjustment of their rental rates.

After receiving the Board's decision in Gossett, BIA and the Swinomish Tribal Community (Tribe) began efforts to enforce the decision. ^{2/} Appellants do not dispute that on July 31, 1995, letters were sent to each of them notifying them that their leases would be cancelled if they continued to fail to pay the adjusted rent as approved in Gossett. The record does not contain a response from Appellant Hutt. Appellant Pentz responded on August 9, 1995, stating that she intended to abide by the decisions made at an upcoming meeting among the Tribe, the individual Indian landowners, and the lessees. She stated that she had already made a payment toward the unadjusted rent which she owed, and that, after the meeting, she would "be in contact with you [i.e., the Tribe] to determine the correct amount

^{1/} Based on the filings by Appellant Hutt in Docket No. IBIA 96-69-A, the Board misspelled his first name in Gossett. There is no dispute, however, that Appellant Hutt is the same person as the appellant in Gossett.

^{2/} The Tribe provides realty services on its reservation under an Indian Self-Determination Act contract. 25 U.S.C. §§ 450-450n (1994).

of back lease payments I'll need to remit by the September 1[, 1995,] deadline."

By separate letters both dated December 6, 1995, the Tribal Natural Resources Manager wrote Appellants, stating:

All administrative appeals have now been exhausted and I have been authorized by [BIA] to offer the following proposal. Please review the two options and inform me of your choice, in writing, no later than December 15, 1995:

1. Enter into the new lease (copy and summary sheet enclosed) at the discounted rental schedule and pay discounted back rent plus late fees. There is no commitment by the BIA or the BIA [sic] to adjust the initial rent should the BIA's appraisal methodology be revised due to a decision arising from the current set of appeals. [3/]

2. Remit full payment as described in our July 31, 1995 letter but receive credit toward future rental payments if the decision on the appeals before the Portland Area Director or subsequent appeal to the [Board] results in a revised rental adjustment methodology.

If neither option is acceptable, and payment in full is not received in this office by December 15, 1995, then I have been instructed to initiate cancellation proceedings immediately and subsequently proceed with ejectment actions, if necessary.

By separate letters dated December 19, 1995, the Superintendent, Puget Sound Agency, BIA (Superintendent), notified Appellants that their leases had been cancelled. On January 19, 1996, Appellant Hutt appealed the cancellation notice to the Area Director. On February 20, 1996, Appellant Pentz appealed the December 19, 1995, cancellation notice to the Area Director.

By separate decisions, both dated April 12, 1996, the Area Director affirmed the Superintendent's cancellation of Appellants' leases.

Appellants appealed to the Board. Appellants' entire Opening Brief is devoted to a new challenge to the rental rate adjustments which the Board affirmed in Gossett. Appellants did not respond to the Area Director's Answer Brief.

Appellants obviously continue to disagree with the decision to adjust their rental rates to the amounts affirmed in Gossett. However, they did

3/ Additional rental rate adjustments were made during the time the appeals in Gossett were pending. Appeals from some of these adjustments are the subject of the decision in Elliott v. Portland Area Director, 31 IBIA 287 (1997).

not seek judicial review of that decision. Instead, they merely declined to pay the adjusted rents, and filed these appeals when BIA attempted to enforce Gossett.

At the most charitable, these appeals can only be considered petitions for reconsideration of Gossett. Any such petition is exceedingly untimely. Under 43 C.F.R. § 4.315, a petition for reconsideration must be filed with the Board within 30 days from the date of the decision. These appeals were filed approximately eleven months after the decision in Gossett.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals from the Portland Area Director's April 12, 1996, decisions are dismissed as untimely petitions for reconsideration.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge